

**INTHEUNITEDSTATESDISTRICTCOURT  
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

<b>TRACYA.MUMFORD</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PECOENERGYCOMPANY,etal.,</b>	:	
<b>Defendant.</b>	:	<b>NO.02-929</b>

**Reed,S.J.**

**April29,2002**

**MEMORANDUM**

This suit arises out of several alleged incidents relating to the discharge of plaintiff Tracy A. Mumford (“Mumford”) from PECO Energy Company (“PECO”). Mumford brings this suit against PECO as well as four individual PECO employees: Gregory N. Dudkin, Joseph Grimes, Conrad Olenik and Drew Fetters (collectively referred to as “PECO” or “defendants”). Mumford filed her complaint in the Court of Common Pleas of Chester County, Pennsylvania, and defendants properly removed the case because plaintiff seemed to be averring federal causes of action arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Family and Medical Leave Act (“FMLA”) of 1993, 29 U.S.C. § 2601, as well as 42 U.S.C. § 1983 (“§ 1983”). Plaintiff also asserts various state law claims.

Presently before this Court is the motion of defendants to dismiss, (Document No. 2), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), the response, which for reasons which follow this Court will construe as a motion to remand, and there reply thereto. For the following reasons, the motion to dismiss will be granted in part and denied in part, and the case will be remanded to the Court of Common Pleas of Chester County, Pennsylvania.

## **I. Background** <sup>1</sup>

Mumford began her employment with PECO on or about May 22, 1989. (Compl. ¶7.) Her employment ended on or around June 9, 1997 when she signed a Confidential Separation Agreement and Full Waiver and Release of Claims (“Separation Agreement”). ( Id. ¶42.) Mumford’s 93 paragraph complaint, which asserts ten not clearly identified claims, essentially alleges the following: Mumford engaged in consensual sexual relations with the individual named defendants, and when she refused to continue those relations she was subjected to harassment, retaliation, intimidation and transfer and was eventually constructively and wrongfully discharged from her employment. Plaintiff further alleges that she signed the Separation Agreement under duress, fraud, false imprisonment and intimidation and seeks rescission thereof.

On June 6, 2001, Mumford filed a Summons in the Court of Common Pleas of Chester County, Pennsylvania. She filed the complaint in state court on January 23, 2002 and the case was subsequently removed to this Court. Defendants seek to dismiss the claims asserted under Title VII and the Pennsylvania Human Relations Act (“PHRA”) because plaintiff failed to exhaust her claims. Plaintiff concedes that the employment discrimination claims must be dismissed for this failure and requests in her response that with such dismissal the case be remanded because “there are no federal claims remaining.” (Pl.’s Resp. at 3.) This concession, of course, means that plaintiff does not appear to bring any causes of action under either the FMLA or § 1983. It therefore concludes that plaintiff has not asserted claims under either federal

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<sup>1</sup> The facts are extracted from the complaint, with all inferences taken in favor of plaintiff as required under Federal Rule of Civil Procedure 12(b)(6).

statute;<sup>2</sup> however, in the interest of having a complete record, I further conclude, for reasons which follow, that such claims would nonetheless be time-barred. Defendants seek to dismiss the remaining state law claims as time-barred or for failure to state a claim upon which relief may be granted. This Court must decide whether it has jurisdiction over the remaining state claims.

## **II. Analysis**

I begin by clarifying for the record why the complaint fails to assert any federal causes of action. It is well settled that failure to exhaust the administrative remedies in Title VII actions do not impact this Court's subject matter jurisdiction; rather dismissal is warranted under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. See Anjelinov. New York Times Co., 200 F.3d 73, 87 (3d Cir. 1999); Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir. 1997). Claims asserted under the PHRA must also be exhausted before seeking relief from this Court. See Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997). The remaining potential federal claims are untimely. A claim must normally be brought under the FMLA within two years, 29 U.S.C. § 2617(c)(1); however, for willful misconduct, the statute of limitations is three years, 29 U.S.C. § 2617(c)(2). See also Cauciv. Prison Health Serv., Inc., 153 F.Supp.2d 605, 609 (E.D. Pa. 2001); Shannon v. City of Philadelphia, No. Civ. A. 98-5277, 1999 WL 126097, at \*4 (E.D. Pa. Mar. 5, 1999). Likewise, § 1983 is governed by Pennsylvania's two year statute of limitations for personal injury claims. See Nelson v. County of Allegheny, 60 F.3d 1010, 1012 (3d Cir. 1995). Mumford filed a summons in state court on June 6, 2001, nearly four years after signing the Separation Agreement. It therefore concludes that Mumford has not asserted any federal claim in her complaint.

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<sup>2</sup> The complaint does specifically mention these two statutes. (See Compl. ¶39, 66 and 76(q).)

Having so concluded, this Court must decide whether to exercise supplemental jurisdiction over the state claims. 28 U.S.C. § 1367(c) provides in relevant part: “The district court may decline to exercise supplemental jurisdiction over a claim...if... (3) the district court has dismissed all claims over which it has original jurisdiction.” The Court of Appeals for the Third Circuit has determined that § 1367(c) “grants district courts the discretion to refuse to exercise supplemental jurisdiction when ‘values of judicial economy, convenience, fairness, and comity’ counsel that the district court remand state claims to a state forum.” Hudson United Bank v. Li Tenda Mortg. Corp., 142 F.3d 151, 157 (3d Cir. 1998) (citing City of Chicago v. Int’l College of Surgeons, 522 U.S. 156, 173, 118 S.Ct. 523, 534, 139 L.Ed.2d 525 (1997) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350, 108 S.Ct. 614, 619, 98 L.Ed.2d 720 (1988))).<sup>3</sup>

The remaining state claims include various contract claims and tort claims. Defendants agree that the contract claims are not barred by the statute of limitations. Whether or not plaintiff has stated a claim to invalidate the Separation Agreement involves multiple questions of state law, including, for instance, the circumstances in which an individual can invalidate or rescind a contract signed under duress and the elements required to state a claim of fraud. As this case is in such early stages of litigation, I conclude for reasons of judicial economy, convenience, fairness, and comity, the state court should resolve such purely state law questions. While it may

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<sup>3</sup> The Court of Appeals in Hudson also clarified the difference between remanding a case pursuant to 28 U.S.C. § 1367(c), and remanding a case pursuant to 28 U.S.C. § 1447(c). The text of § 1367(c) is provided above; § 1447(c), in contrast, reads: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the cases shall be remanded.” § 1447(c) is only warranted when a court has no authority to hear a state case upon removal, whereas § 1367(c) is invoked where removal was proper, but later the federal claims are dismissed. See Hudson, 142 F.3d at 157-58. Of course, supplemental jurisdiction can also be declined under § 1367(c) where the case originated in federal court. See id. Thus, § 1367(c) and not § 1447(c) governs this action.

well that defendants are entitled to judgment as a matter of law, this Court would need to expend resources before reaching a conclusion on that issue, and it may turn out upon review that plaintiff can either survive this motion to dismiss or cure any defect under state law claims by amending the complaint. If the latter should prove true, this Court would proceed to adjudicate purely state law questions for the whole of litigation. With that potential outcome, it is the state court which should adjudicate these claims. While it does appear that the tort claims may be barred by Pennsylvania's two year statute of limitations, 42 Pa. C.S.A. § 5524, plaintiff has asserted she wishes to challenge those limitations laws. I conclude further that since the contract claims raise more challenging questions, the state court should resolve all of the remaining state claims. I do note, however, that as plaintiff has conceded that she has not stated a claim under the PHRA, and as this Court has provided the legal reasoning for that concession, I will dismiss that one state claim.

### **III. Conclusion**

Defendants are entitled to judgment under Federal Rule of Civil Procedure 12(b)(6) for any claims asserted under Title VII, the PHRA, the FMLA and § 1983, as plaintiff has failed to state a claim for each of these causes of action. This Court declines to exercise supplemental jurisdiction over the remaining state claims and will remand this action pursuant to 28 U.S.C. § 1367(c).

An appropriate Order follows.

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**ORDER**

**ANDNOW** ,this29<sup>th</sup>dayofApril,2002,uponconsiderationofthemotionofdefendants PECOEnergyCompany,GregoryN.Dudkin,JosephGrimes,ConradOlenikandDrewFettersto dismiss,(DocumentNo.2) ,pursuanttoFederalRulesofCivilProcedure12(b)(1)and12(b)(6), theresponse,whichforthe reasonsstatedinthe foregoingmemorandum hasbeenconstruedasa motiontoremand,andthereplythereto,andforthereasonsstatedinthe foregoing memorandum,itishereby **ORDERED**that:

1. Themotiontodismissis **GRANTED**inpart.AllclaimsassertedunderTitleVIIofthe CivilRightsActof1964,42U.S.C.§2000e etseq.,TheFamilyandMedicalLeaveAct of1993,29U.S.C.§2601,42U.S.C.§1983,andthePennsylvaniaHumanRelationsAct are **DISMISSED**pursuanttoFederalRuleofCivilProcedure12(b)(6).
2. Themotionis **DENIED**inpart.Pursuantto28U.S.C.§1367(c),allremainingclaims are **REMANDED**totheCourtofCommonPleasofChesterCounty,Pennsylvaniaat CivilActionNo.01-04793.
3. TheClerkofthisCourts hallforthwithcausethefileandrecordtobedeliveredtothe ProthonotaryoftheCourtofCommonPleasofChesterCounty.

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**LOWELLA.REED,JR.,S.J.**